



Legal and Regulatory Issues for Hemp Growers

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AGRICULTURAL &
RESOURCE ECONOMICS

OVERVIEW



Overview

Legal issues associated with hemp are growing areas:

- Intellectual property issues
- Contracting issues
- Nuisance issues
- Regulatory issues

Overview

With contracts, few good contracts out there that protect growers and processors

A lot protect processors only

- Golden rule of contracts: The one that wrote took care of himself/herself

Overview

Regulatory issues include:

- What will FDA do with CBD?
- What about federal banking regulations?
- What about the USDA interim rules?



REGULATORY ISSUES



Banking Regs



This month, federal regulators removed hurdles for banking services to hemp related businesses

Banking Regs

Change will no longer require banks to file paperwork to anti-money laundering authorities and treat the business as suspicious

Changes should allow lending services to hemp businesses

Food and Drug Regs

Biggest issue currently is how will Food and Drug Admin (FDA) treat CBD as a food additive and supplement.

Last year, FDA approved first CBD drug, Epidiolex, for the treatment of seizures associated with two rare and severe forms of epilepsy

Food and Drug Regs

FDA recently sent letters warning 15 companies that CBD is currently not generally recognized as safe (GRAS) among qualified experts for its use in human or animal food.

This isn't new, FDA has done this before.

Food and Drug Regs

All this means: You can't make health claims on CBD products and can't use as food additive till approved by FDA.



Food and Drug Regs



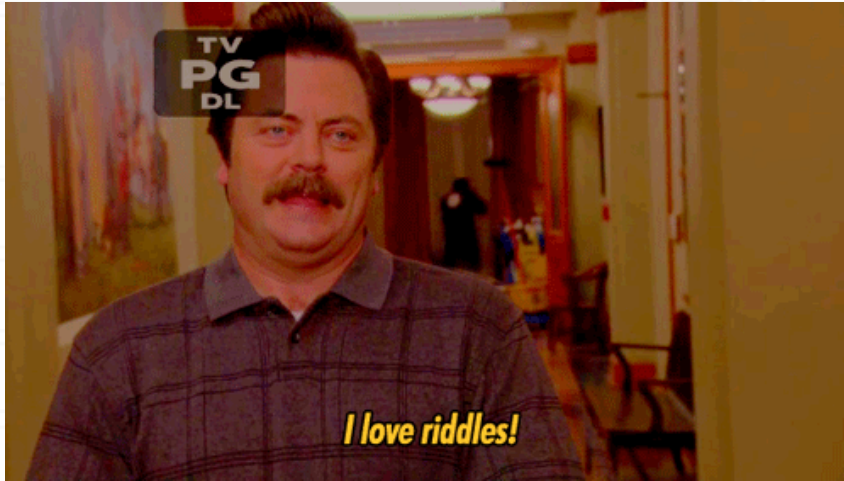
- Important to note:
FDA only regulates
products sold in
interstate commerce
- States regulating
products sold
intrastate

Food and Drug Regs

Unclear at this time how FDA will regulate CBD.

Until that is clear, will not see market reach full potential

USDA Regulations



- USDA has announced interim rule for hemp
- Public comment period ends Dec. 30

USDA Regulations

Issues in regs:

- 15 days prior to harvesting testing must happen.
- Testing must happen in a DEA-registered lab
- Requiring testing for total THC

USDA Regs

Clarifies that interstate
transportation of hemp
is legal

Stay tuned for how
Idaho handle this news



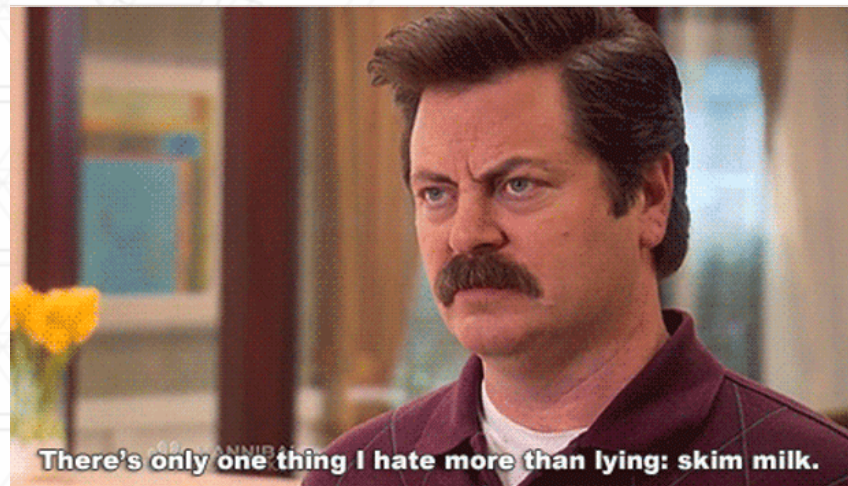
Regulatory Outlook

We have some clarifications (banking and USDA)

Still lots of uncertainty in the regulatory field (FDA)

Regulatory Outlook

Big question out of
USDA regs is what
states will adopt plans
and what states won't
adopt



LEGAL ISSUES



Legal Issues

- Contracting Issues
 - Overview of contracts
 - What do growers need to consider?
- Nuisance Issues
 - Growing number of complaints about hemp production

Contracting Issues

- Risk management tools limited for hemp
- Contract is important tool to help manage risks

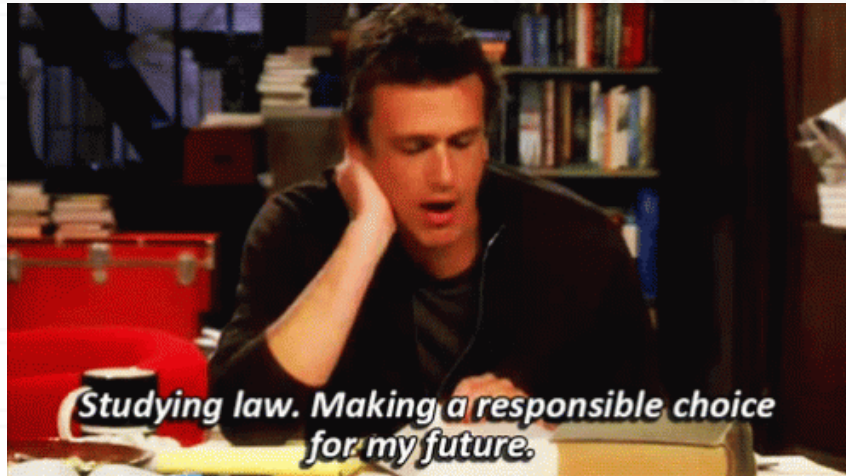


Contracting Issues

Contracts reviewed are not consistent in provisions

Number of standard clauses

Contracting Issues



What should growers be looking for in a good contract?



PROVISIONS TO BE FOUND IN A GOOD CONTRACT



Intellectual Property Protections

- Genetics owned by processor
- Grower agrees not to keep seed for future use



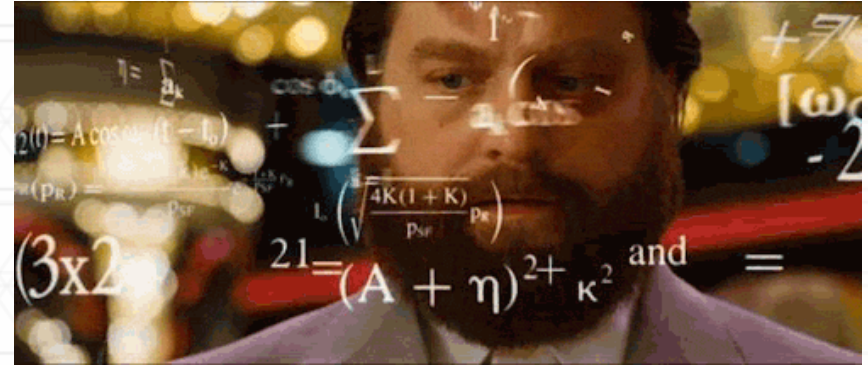
Intellectual Property Protections

Hemp processor may want to specify any seeds produced remains the processor's property

Quality Specifications

Should the hemp be delivered at a certain % moisture?

Should it be delivered bucked?



Quality Specifications



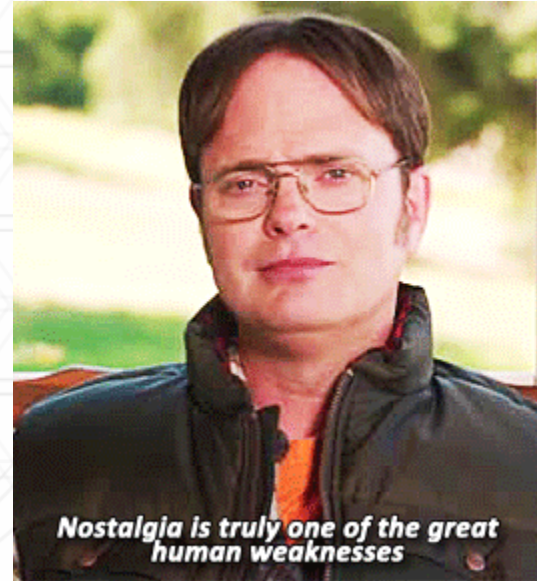
Should it be free from trash and debris upon deliver?

Does it need to contain a certain percentage of CBD?

Quality Specifications

Should it be delivered
free of unapproved
pesticides?

Should it be free of
disease and insects
when delivered?



Quality Specifications

Need to make sure that % moisture is obtainable in grower's area

Specifying quality will help reduce potential issues with hemp being rejected

Payment Provision

Contract should have some provision to specify how payment will be calculated

Example: *“Price and Terms of payment: 250 per acre upon execution of this Agreement; \$250 per acre net 15 following the harvest and delivery of all Material”*

Payment Provision

Other examples would be to specify where pulling market price from.

We need to have some way to determine how grower will be paid

Payment Provision

When does processor have to pay?

Example: The Purchase Price will be paid to Grower on the following schedule: 25% upon delivery with the remaining amount equally distributed over 30, 60 and 90 days. Purchaser shall pay the gross amount of any present or future sales, use, excise, value-added or other similar tax applicable to the price, sale, or delivery of any industrial hemp purchased hereunder.

Payment Provision

What happens if payment isn't made?

Can Grower request amount held in escrow to guarantee payment?

ON-FARM STORAGE



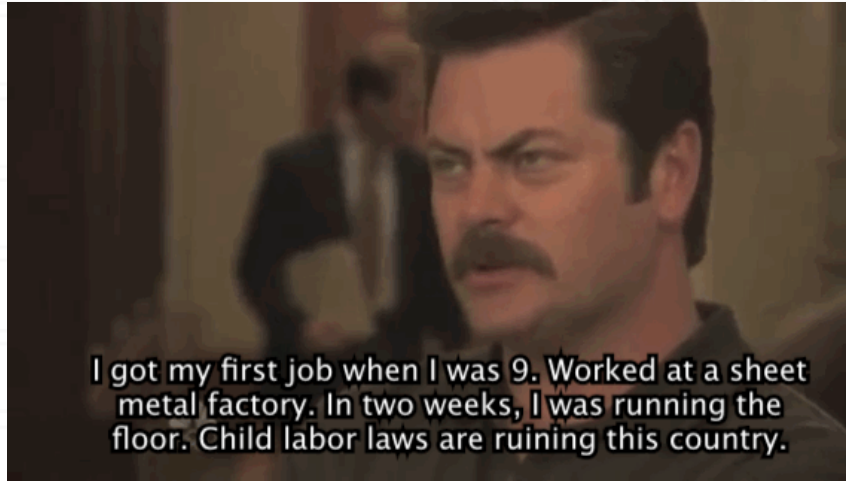
On-Farm Storage

- If terms of contract require on-farm storage?
- Can producer maintain quality in storage?
- Do extraction services exist in area?

NUISANCE



Nuisance



Seeing a raise in neighbors complaining about hemp production and processing

Claim that hemp production creates odors that impact neighboring properties

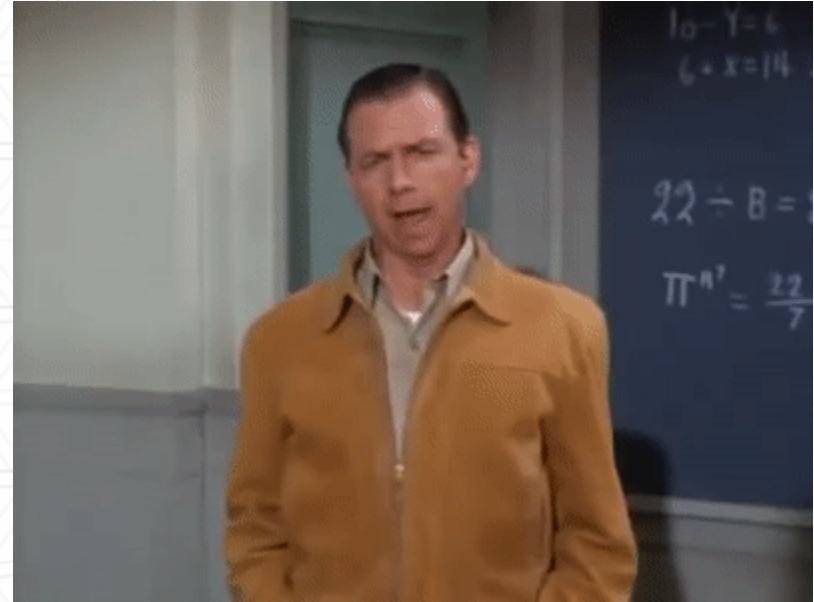
Right-to-Farm Laws

Right-to-farm law provides nuisance defense

Tennessee's creates "a rebuttable presumption that a farm or farm operation is not a public or private nuisance" Tenn. Code Ann. § 43-26-103(a).

Right-to-Farm Laws

- To qualify:
 - Farm needs to use generally accepted ag practices
 - Complying with applicable rules or statutes



Right-to-Farm Laws

TN includes in definitions of operations qualifying for protection industrial hemp operations

From my review, only state to do that.

Other states not entirely clear if hemp producer is protected

Legal Outlook

Regulatory certainty may help cure issues associated with the contracts

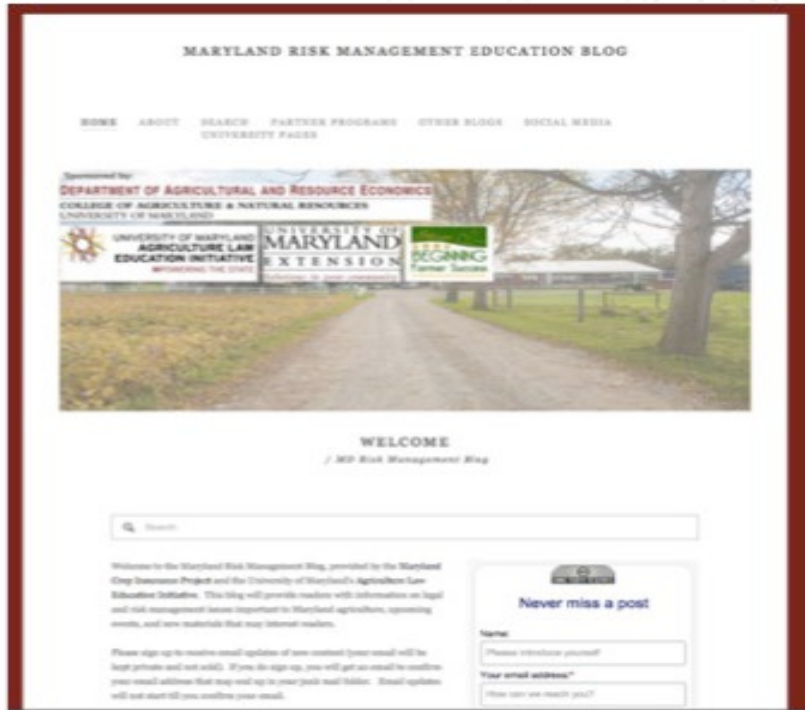
Lots of bad contracts being used out there and growers need mechanisms to better negotiate

Legal Outlook



More states should be like TN, clarify right-to-farm defense applying to hemp.

Md. Risk Management Blog



- Department of Ag and Resource Econ's blog updated periodically with timely legal, crop insurance, farm policy, and water conservation information.
- www.agrisk.umd.edu
- Signup for updates on the site to get new posts emailed to you, or
- Text 999066 to 1-781-262-3877 to signup



Podcast

- New episodes 2x per month covering risk management education issues
- www.marylandagpodcast.org
- Find also on iTunes, Google Play, and TuneIn



Any Questions??

Thank you!



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